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OFFICE OF PETITIONS

In re Application of
Peter Bodine
Application No. 10/666,851
Filed: September 19, 2003
Attorney Docket No. 00630/100M091-US2

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed February 13, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/394,832, as set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The decision mailed February 1, 2007 dismissed the petition of April 20, 2006 for failing to provide a relationship. The amendment submitted with the renewed petition is still unacceptable since it fails to provide the relationship of Application No. PCT/US00/025035 to Application No. 09/394,832. The relationship is whether the PCT application is a continuation, continuation-in-part, or division of Application No. 09/394,832. *Note* MPEP 1895.01, which states:

- * * * the specific reference to the international application required under 35 U.S.C. 120 and 365(c) must either be contained in the first sentence of the specification following the title or included in an application data sheet. 37 CFR 1.78(a)(2)(iii). The specific reference must identify the parent international application by international application number and international filing date and indicate the relationship of the applications (i.e., continuation, continuation-in-part, or division). See 37 CFR 1.78(a)(2)(i) and MPEP § 201.11. An example of an appropriate first sentence of the specification is, for example, "This is a continuation of International Application PCT/EP2004/000000, with an international filing date of January 5, 2004, now abandoned."

Therefore, the amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.


Frances Hicks

Petition Examiner
Office of Petitions